IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.318 OF 2006

Sikandar @ Punjabi Abdul Sheikh ...Petitioner

vs.

The State of Maharashtra & Ors. ...Respondents

Mr.Naveen Chomal for the Petitioner
Mr.S.R.Shinde A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 13,2006.

ORAL JUDGMENT:

1. Heard learned Counsel for the parties. The challenge in this Writ Petition under Article 227 of Constitution of India is to the order of externment passed under the Bombay Police Act, 1951. The challenge is also to the decision of the Appellate Authority confirming the said order. The submission of the learned Counsel for the Petitioner is that the impugned order shows non-application of mind. It is submitted that the alleged prejudicial activities which are referred to in the order of externment are confined to a particular area in the city of Mumbai. The submission is that the order of externment relating to Districts of Mumbai, Mumbai Suburban, Navi Mumbai, Thane and Raigad is excessive.

2. The learned A.P.P. in support of the order placed reliance on the decision of the Apex Court in case of Pandharinath Rangnekar vs. Deputy Commissioner of Police [(1973) 1 S.C.C. page 372] and submitted that considering the

availability of fast modes of transport, the order is required to be passed extending to the districts which are geographically connected with Mumbai. He submitted that considering the prejudicial activities of the Petitioner no interference is called for.

3. I have considered the submissions. I have also perused the Affidavit-in-reply filed by the Respondents. Perusal of the order of externment shows that prejudicial activities of the Petitioner on which reliance is placed are within the limits of Mumbai and none of the activities extend to any other district.In the Affidavit-in-reply it is stated thus:

> "8. I say that the externee is habitual criminal and involved in many more cases and hence to restrain him from entering in area of Mumbai, Mumbai Suburban Districts and other adjoining districts, the then Dy. Commissioner of Police, issued the order of externment in order to prevent him from entering in the area concerned, order to externing him from the Mumbai, Mumbai Suburban, Navi Mumbai, Thane and Raigad Districts. I say that the said order is not excessive in nature as there is wider scope for transportation and easy conveyance between the above said districts. Hence, the order passed is legal and proper."

It must be noted here that though Navi Mumbai stated to be a district in the impugned order, it is not a separate revenue

district. It forms part of revenue District of Thane. Reliance placed on the decision of the Apex Court in case of Pandharinath Rangnekar (supra) will not help the Respondents in as much as by the said decision the Apex Court upheld the view taken by this Court that Mumbai and Thane districts form one unit considering the various features such as geographical proximity, availability of suburban local trains, common industrial area etc. However, it is not possible to come to the conclusion that Districts of Mumbai, Thane and Raigad form one unit. In a given case, the order of externment may not be restricted to the area in which alleged prejudicial activities are carried out. Mere geographical proximity of the two districts is no ground to extend the order to an adjoining district. The area to which the order of externment is passed must be chosen to meet the situation created by the acts of the person sought to be externed.

4. The law laid down by this Court in case of Ganpat @ Ganesh Tanaji Katare and others Vs. Assistant Commissioner of Police and others [(2005) All M.R. Criminal page 2717] will squarely apply to the facts of the present case. The said Judgment holds that the Districts of Mumbai, Thane and Raigad cannot be treated as one unit. It is, thus, obvious that the order of externment is excessive. It is well settled that the order of externment, if found excessive, cannot be modified in a Petition under Article 227 of Constitution of India and the same is required to be set aside being illegal. Hence, the

Petition must succeed. Hence, I pass the following order :

5. The order of externment passed against the Petitioner on 2nd June 2005 (Exh.C) is quashed and set aside.

JUDGE